(1)

Supreme Court, U.S.
FILED

99 833 SEP 27 1999

No.

OFFICE OF THE CLERK

In The
Supreme Court of the United States

Patrick Dain,

Petitioner,

v.

COUNTY OF VENTURA,
and
RONALD KOMERS, AS AN INDIVIDUAL AND AS FORMER PERSONNEL DIRECTOR OF THE COUNTY OF VENTURA,
and
BARBARA JOURNET, AS AN INDIVIDUAL AND PERSONNEL DIRECTOR OF THE COUNTY OF VENTURA,
AND DOES 1-10, INCLUSIVE,

Respondents.

Petition for Writ of Certiorari to the
California Court of Appeal, Second Appellate District

PETITION FOR WRIT OF CERTIORARI

Patrick Dain
c/o 2410 G Las Posas Road
no. 102
Camarillo, (93010)
California
(805) 645-3401

2018

QUESTIONS PRESENTED FOR REVIEW

1. May the County of Ventura, as the recipient of federal funds, force Californians to belong to the Social Security System against their will?

2. May the County of Ventura circumvent International Treaties protecting religious freedoms in deciding what personal information is correct in regards to an individual?

3. May the County of Ventura compel a Californian who does not possess a social security number to violate their religious beliefs?

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This petition is Sui Generis in nature. It is an opportunity for the Court to establish guidelines for participation in the Social Security Numbering System within the states. It also affords the Court the opportunity for deciding whether or not a state or its political subdivisions may use false information by forcing its Citizens to participate in federal programs that are religiously repugnant to the Citizen. Further, this Petition affords the Court a platform to establish once and for all that the Social Security Welfare scheme is voluntary within the states.

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Petition for Writ of Certiorari to the California Court of Appeal, Second Appellate District

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PETITION FOR WRIT OF CERTIORARI

PRAYER

TO THE HONORABLE CHIEF JUSTICE AND TO THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES, MAY IT PLEASE THE COURT:

The Petitioner, Patrick Dain, respectfully prays that a writ of certiorari issue to review the judgement of the California Court of Appeal, Second Appellate District, which was entered on 29 April 1999.

OPINION BELOW

The Court of Appeal entered its decision affirming the Respondents' Motion for Judgement of dismissal on 29 April 1999. A copy of the unpublished ruling is attached as Appendix A.

The Court of Appeal denied Petitioner's Petition for rehearing on May 27, 1999. A copy is attached as Appendix B.

The California Supreme Court denied Petitioner's request for review on 14 July 1999. A copy is attached as Appendix C.

JURISDICTION

Given the State Supreme Court's refusal to review the Court of Appeal's affirmation of Respondent's Motion for Judgement of dismissal, the jurisdiction of this Court is invoked via the U.S. Constitution Article IV, Section 2 (Treaty and other Clauses) and the First, Ninth and Tenth Amendments.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment One:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

United States Constitution, Article 3, Section 2.1.:

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and Treaties made, or which shall be made, under their authority;-to all cases affecting ambassadors, other public ministers and consuls;-to

all cases of admiralty and maritime jurisdiction;-to controversies to which the United States shall be a party;-to controversies between two or more States;-between a State and citizens of another State;-between citizens of different States;-between Citizens of the same State claiming lands under grants from different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

United States Constitution, Amendment Nine:

The enumeration of the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

United States Constitution, Amendment Ten:

The Powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

INTERNATIONAL TREATIES INVOLVED

UN Treaty of Universal Declaration of Human Rights of 10 December 1948:

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 7

All are equaled before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection of the law. All are entitled to equal protection against any discrimination in violation of the Declaration and against any incitement to such discrimination.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes his right to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.

Article 19

Everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinions without inference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

2. No one may be compelled to belong to an association.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any kind of the rights and freedoms set forth herein.

The Treaty of The American Convention on Human Rights, "Pact of San Jose, Costa Rica" of 22 Nov 69

Article 1: Obligation to respect rights. 1. The States Parties to this convention undertake to respect the rights and freedom recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Article 12. Freedom of Conscience of religion. 1. Everyone has the freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private. 2. No one shall be subject to restrictions that impair his freedom to maintain or to change his religion or beliefs.

Article 14. Right to reply. 1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to

reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

Article 16. Freedom of Association. 1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

Article 25. Right to judicial protection. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this convention, even though such violation may have been committed by persons acting in the course of their official duties.

The UN Treaty of International Covenant on Economic, Social and Cultural Rights of 1976:

Part I

Article 1. All peoples have the right to self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Part II

Article 2.2. The states parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 5.1. Nothing in the present Covenant may be interpreted as implying for any State, group, or person has the right to engage in any activity or to perform any act aimed at the destruction of any of these rights or freedoms recognized herein,...

Judge Harry Pregerson, U.S. 9th Circuit Court of Appeals in San Francisco:

> "It has long been recognized that, where treaty provisions establish individual rights, these rights must be enforced by the Courts of the United States at the behest of the individual."

STATEMENT OF THE CASE

Sometime during the 1960's, Petitioner Patrick Dain's Mother obtained a social security number for him. As Petitioner grew older and studied the holy scriptures, he came to believe that social security numbers are the mark of the beast as spoken of in the Holy Bible. Petitioner has a string, sincere religious belief that social security numbers are the mark of the beast and he should not obtain, use, or be associated with one.

Petitioner Patrick Dain studied the law concerning the Social Security Act and learned that participation in Social Security is voluntary. Petitioner rescinded the Social Security Number his Mother wrongfully obtained for him by filing legal affidavit to that effect with the Los Angeles County Recorder's Office. Petitioner Patrick Dain requested the County of Ventura, where Petitioner works, to remove said number from its work records on religious grounds. Petitioner received an affidavit from his Mother which states that she applied for the number on his behalf based upon misinformation and deliberate misinformation by government officials. Petitioner does not have or use a Social Security Number. Petitioner advised the County of Ventura that the number contained in its records was not his, was obtained by his Mother, that the number conflicts with his strong sincere religious beliefs, and that the Social Security scheme is voluntary. Petitioner also told the County of Ventura that he waives and refuses to participate in any welfare benefit schemes.

The County of Ventura refused to remove Petitioner's Mother's Social Security Number from the work records that pertain to Petitioner. The County of Ventura cited its authority to keep and use the incorrect information (number) from *Bowen v. Roy,* (1986) 476 U.S. 693. The County of Ventura maintains that it may use any number it wishes in the interests of government convenience which it claims is a compelling government interest.

This Sui Generis litigation arose from the County of Ventura's refusal to amend its work records with correct information.

REASONS FOR GRANTING THE WRIT

1. The Social Security Welfare Scheme is Voluntary

We argue here that participation in the Social Security welfare scheme is voluntary. Therefore, one may or may not participate in the program and cannot be forced against his will. If one chooses to participate, he may apply for a Social Security Number. One may not apply if one has religious beliefs against such application and he cannot be forced to participate in any federal welfare scheme against his will.

The lower courts have interpreted *Bowen, supra,* broader than the precise facts to which it is applied.

2. Forced Participation or Association in a Federal Welfare Scheme Violates Religious Rights

The Court has ruled that participation in federal programs is voluntary in the states. *Printz and Mack v. United States,* 95-1478 and 95-1503 U.S.

Two of our most precious rights are those of freedom of religion and association. Religious rights and freedom of association are protected not only by the First Amendment but by the UN Treaty of Universal Declaration of Human Rights of 10 December 1948, The Treaty of The American Convention on Human Rights, "Pact of San Jose, Costa Rica" of 22 Nov 69, and The UN Treaty of International Covenant on Economic, Social and Cultural Rights of 1976. The appellate court was silent when these international treaty issues were raised.

Plaintiff has made his own covenant with God not to receive or be associated with the mark of the beast:

"No man can serve two masters: for either he will hate the one, and love the other, or else he will hold to the one, and despise the other. Ye cannot serve God and mammon." Matthew 6:24.

"...choose you this day whom ye will serve; whether the Gods which your fathers served that were on the other side of the flood, or the gods of the Amorites, in whose land ye dwell: but as for me and my house, we will serve the Lord." Joshua 24:15.

3. Californians Cannot be Compelled to Participate in Voluntary Federal Schemes

The right to participate or not to participate in federal welfare schemes rests with the people and is upheld by the ninth amendment. The Constitution does not empower the government to force the people into such a scheme. The Constitution does not delegate such powers to the United States or to the States. Therefore, the power to participate or not to participate is reserved to the people by the tenth amendment. A decision not to participate in a federal benefits scheme because of religious beliefs is guaranteed by the first amendment.

4. CONCLUSION

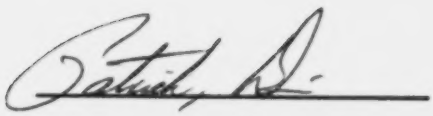
Given the foregoing, Petitioner respectfully requests that a writ of certiorari issue to review the judgement of the Second Appellate Court of Appeal of California.

VERIFICATION

Wherefore, I have read the foregoing Petition for Writ of Certiorari, with points and authorities and know the contents thereof, and that the same is true of my own knowledge, except as to those facts which are stated in information and belief, and as to those matters, I believe them to be true.

I declare or certify under penalty of perjury under the laws of California state that the forgoing is true and correct.

Dated this 12th day of November, 1999



Patrick Dain, Petitioner,
In Propria Persona
C/o 2410 G Las Posas Road
No. 102
Camarillo, (93010)
California

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

PATRICK DAIN,

Plaintiff and Appellant,

v.

COUNTY OF VENTURA et al.,

Defendants and Respondents.

2d Civil No. B125700
(Super. Ct. No. 179954)
(Ventura County)

COURT OF APPEAL-
SECOND DIST.
FILED
APR 29 1999

JOSEPH A. LANE, Clerk
Deputy Clerk

Appellant Patrick Dain appeals from the judgement of dismissal entered after the trial court sustained a demurrer to his amended complaint without leave to amend. We affirm.

Facts and Procedural Background

According to appellant's amended complaint, in 1994 he became aware that his religious beliefs made him ineligible for social security and that assignment of a social security number to him was in error. In 1994, 1995, and 1996, he contacted various county officials, including the sheriff" department, the personnel director, the auditor" office, and the benefits coordinator, and

requested correction of all county records to remove his social security number because of his sincere religious belief that such numbers are the mark of the beast as outlined in the Book of Revelation of the Holy Bible. Appellant alleges that his request were refused. He also alleges that, in October of 1996, county counsel advised him that the county would not comply with his request. Finally, he alleged that in June of 1998, the Social Security Administration advised him that he was not eligible for social security benefits due to his religious beliefs.

Appellant's original complaint, which was filed in March of 1998, sought general and punitive damages against respondents County of Ventura and Ronald Komers (as personnel director) for defamation, denial of constitutional rights, "economic coercion," and "mental suffering." The trial court sustained respondents' demurrer to his complaint with leave to amend.

Thereafter, appellant filed a first amended complaint. His amended complaint added respondent Barbara Journet as a defendant (as personnel director) and sought general and punitive damages for three causes of action: (1) "trespass on religious rights" in violation of the California Constitution, article I, section 4, and Civil Code sections 1798.18, 1798.45, and 51; (2) "violation of liberty of conscience" under the California Constitution, article I, section 4; and (3) mental suffering.

Respondents demurred to the amended complaint, primarily arguing that the causes of action were nonexistent legal theories, and that the action was barred by appellant's failure to comply with the governmental tort claim filing requirements and the applicable statute of limitations. (Gov. Code, § 945.4; Code Civ. Proc., § 340.)

In opposition, appellant contended there was no legal requirement that a tort claim be filed for an alleged violation of a state constitutional right to religious free exercise, and that the statutes of limitation were inapplicable because respondents' bi-weekly use of his social security number constituted a continuing violation.

The trial court sustained the demurrer without leave to amend, reasoning that the complaint failed to state a constitutional violation, citing *Bowen v. Roy* (1986) 476 U.S. 693 [90 L.Ed.2d

735]; that the elements of a cause of action had not been alleged; and that the failure to comply with the tort claims filing requirements precluded the state claims in any event. Judgement in favor of respondents followed.

Discussion

On appeal from a judgement of dismissal entered after a demurrer has been sustained without leave to amend, we must affirm the judgement if it is correct on any theory. (*Hendy v. Losse* (1991) 54 Cal.3d 723, 742.) "If there is a reasonable possibility that the defect in a complaint can be cured by amendment, it is an abuse of discretion to sustain a demurrer without leave to amend. [Citation omitted.] The burden is on the plaintiff, however, to demonstrate the manner in which the complaint might be amended." (*Ibid.*)

Appellant contends the trial court erred in sustaining the demurrer because he stated claims for trespass of his religious beliefs, violation of liberty of conscience, and mental suffering. We conclude the trial court properly sustained the demurrer without leave to amend.

First, to the extent appellant's amended complaint attempted to allege state constitutional and statutory claims, his action is barred for failing to comply with the government tort claims filing requirements. California's Tort Claims Act provides, subject to certain exceptions, that an action for money damages against a local public entity may not be maintained unless a written claim has first been timely presented to the entity and rejected in whole or in part. (Gov. Code, §§ 905, 945.4.) Compliance with the claims statutes is mandatory; failure to file a claim is fatal to the cause of action. (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 454.) Moreover, in order to state a cause of action, compliance with the claims statutes when applicable, or the existence of circumstances excusing compliance, must be alleged by the plaintiff. (*Chase v. State of California* (1977) 67 Cal.App.3d 808; Cal. Gov Tort Liability Practice (Cont.Ed.Bar 1992) §§ 6.7, 6.27, 6.128.)

A review of appellant's amended complaint reveals that each of the causes of action alleged seeks money damages (general and punitive) based on violations of the California

Constitution and the Civil Code. Appellant did not allege compliance with the claims statutes or show that he was excused from compliance. Contrary to his contentions, the fact that his causes of action are founded directly on our state Constitution does not excuse him from compliance with the claims statutes. (*City of San Jose v. Superior Court, supra,* 12 Cal.3d at p. 454; *Vinnicombe v. State of California* (1959) 172 Cal.App.2d 54, 57.) Appellant cites no authority on appeal demonstrating that the claims statutes were either inapplicable or that he was excused from compliance. Nor did he request leave to amend below to a state a cause of action not subject to the claims statute.1

Second, to the extent appellant's complaint can be construed to allege either state or federal constitutional claims, it is barred by the applicable statutes of limitations. He alleges that county officials refused to expunge his social security number from county records in accordance with his requests as early as 1994, and that the county's refusal to do so violated his state constitutional rights. The one year limitations period set forth in Code of Civil Procedure section 340, subdivision (3), applies to infringements of personal rights, such as the constitutional violation alleged here. [E.g., *Acuna v.*

---

1 Appellant's complaint does not primarily seek injunctive or declaratory relief which might render compliance with the claims statute inapplicable. (See, e.g., *Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1081 [nonpecuniary actions, such as those seeking injunctive or declaratory relief, when money is an incident to such an action, are not subject to the claims filing requirements; when the primary purpose of the action is pecuniary in nature, the action is subject to the claims filing requirements].)
Regents of University of California (1997) 56 Cal.App.4th 639, 646 [one-year limitation period applies to actions concerning rights to free speech, assembly, and civil rights].) Appellant's complaint was filed in 1998, nearly four years after the county first allegedly refused to comply with his request to remove his

social security number from its records. Consequently, his action is barred.

Appellant has cited no authority demonstarting that the alleged violation here is continuing in nature for purpose of statute of limitations. (*Herbert v. Reinstein* (E.D.Pa. 1997) 976 F.Supp. 331, 337 [statute of limitation barred action for civil rights violation under 42 U.S.C. § 1983; "courts are generally wary of extending the doctrine [of continuing violations] to save claims arising outside of the employment discrimination area"].)

Third, appellant's amended complaint also alleges that respondents' refusal to correct their records violated his statutory rights under Civil Code sections 1798.18 and 1798.45. These statutory sections provide no avenue of relief for appellant. As respondent's observe, the Information Practices Act (Civ. Code, §§ 1798 et esq.) does not apply to local governments. (Civ. Code, §§ 1798.3; Gov. Code, § 6252, subd. (b).)

Fourth, the third cause of action alleged by appellant, entitled "mental suffering," presents only an element for damages. It is not a substantive claim. (E.g., *Grieves v. Superior Court* (1948) 157 Cal.App.3d 159, 163-164.)

Finally, the trial court did not err in concluding that appellant failed as a matter of law to state a cause of action for violation of his religious freedoms. In *Bowen v. Roy, supra,* 476 U.S. 693 [90L.Ed.2d 735], the United States Supreme Court rejected a free exercise challenge to the statutory requirement that a social security number be supplied by applicants seeking certain welfare benefits. The court reasoned that the denial of a governmental benefit by a uniformly applicable statute did not constitute infringement of religious liberty or invidious discrimination. The court noted that the requirement did not burden the dissemination of religious views, affirmatively compel plaintiffs to refrain from religiously motivated conduct, or require plaintiffs to engage in conduct found objectionable for religious reasons. The court further reasoned that the social security requirement promoted a legitimate and important public interest in preventing welfare fraud. The court noted that "[t]he Free Exercise Clause simply cannot be understood to require the

Government to conduct its own internal affairs in ways that comport with the religious beliefs of particular citizens. Just as the Government may not insist that [plaintiffs] engage in any set form of religious observance, [the plaintiffs] may not demand that the Government join in their chosen religious practices by refraining from using a number to identify their daughter. '[T]he Free Exercise Clause is written in terms of what the government cannot do to the individual, not in what the individual can extract from the government.' [Citation omitted.]" (*Id.*, at pp. 699-700. [90 L.Ed.2d at p. 744].)

Appellant's amended complaint does not allege that respondents are compelling him to engage in conduct that violates his religious beliefs. He does not allege that he has suffered any adverse employment consequences as a result of his religious beliefs, that he has been denied employment benefits because of a refusal to supply a social security number, or that he is being compelled by respondents periodically to provide a social security number. The trial court did not err in sustaining the demurrer without leave to amend.

The judgment is affirmed.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

GILBERT, Acting P.J.

YEGAN, J.

Barbara A. Lane, Judge
Superior Court County of Ventura

Patrick Dain, in pro per., for Plaintiff and Appellant.

Law Offices of Alan E. Wisotsky and Jeffrey Held for Defendants and Respondents.

APPENDIX A

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION 6

May 27, 1999

DAIN, PATRICK
Plaintiff-Appellant

v.
VENTURA,COUNTY OF
Defendant-Respondent

B125700
Ventura County No. 179954

THE COURT:

Petition for rehearing is denied.

cc: All Counsel
File

APPENDIX B

Second Appellate District, Division Six, No. B125700
S079570

IN THE SUPREME COURT OF CALIFORNIA

Patrick DAIN, Appellant

SUPREME COURT

FILED

v.

JUL 14 1999

Robert Wandruff Clerk
COUNTY OF VENTURA Et Al., Respondents

Deputy

Appellant's petition for review DENIED.

GEORGE

Chief Justice

APPENDIX C

Supreme Court, U.S.
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DEC 15 1999
CLERK

(2)

No. 99-833

In The
Supreme Court of the United States

PATRICK DAIN,

Petitioner,

vs.

COUNTY OF VENTURA; RONALD KOMERS, as an individual and as former Personnel Director of the County of Ventura; BARBARA JOURNET, as an individual and as Personnel Director of the County of Ventura; and DOES 1-10, inclusive,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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In accordance with Rule 15-1, respondents County of Ventura, Ronald Komers, and Barbara Journet file the following brief in opposition to the petition for writ of certiorari.

INTRODUCTION

The argument made by petitioner — that it is impermissible for his employer to require the use of a Social Security number — has been thoroughly briefed and rejected by the Ventura County Superior Court, the California Court of Appeal, and the California Supreme Court, as a result of which the petition is objected to on jurisdictional grounds. Secondly, every appellate decision which has considered the issue has rejected religious challenge to required submission and use of a Social Security number.

On October 18, 1999, petitioner (as a civil plaintiff) filed, in essence, the same set of allegations which he makes in this petition in a United States District Court action (CV 99-06325 GHK (RNBx)). That action was filed by petitioner/plaintiff in the United States District Court for the Central District of California. The defendants in that lawsuit, in essence the respondents in this lawsuit, responded with a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), filed and served on November 8, 1999. It has not yet been ruled upon.

I.

EVERY APPELLATE DECISION TO CONSIDER THE ISSUE HAS REJECTED FIRST AMENDMENT AND OTHER CHALLENGES TO REQUIRED SUBMISSION AND UTILIZATION OF A SOCIAL SECURITY NUMBER.

Petitioner's argument is anything but novel; rather, it constitutes familiar terrain over which the courts of this nation have now passed on numerous occasions. The United States Supreme Court has rejected such an argument. In *Bowen v. Roy*, 476 U.S. 693, 699-701 (1986), this Court held that a statutory requirement that a state agency utilize Social Security numbers in administering benefit programs there in question did not violate the free exercise clause. The government's use of a Social Security number for plaintiff's child was held by the *Bowen* court not to impair in any way appellees' freedom to exercise their religion. The Court stated at 700:

> Roy may no more prevail on his religious objection to the Government's use of a Social Security number for his daughter than he could on a sincere religious objection to the size or color of the Government's filing cabinets.

While the size or color of the government's filing cabinets might offend a citizen's religious beliefs, that is neither a widely held nor generally accepted belief, nor is it an affirmative requirement compelling the plaintiff to do something or to refrain from doing something. There is no

generally accepted component of any religious faith which supports the plaintiff's unique belief. The *Bowen* court also stated:

> Our cases have long recognized a distinction between the freedom of individual belief, which is absolute, and the freedom of individual conduct, which is not absolute. This case implicates only the latter concern. Roy objects to the statutory requirement that state agencies "shall utilize" Social Security numbers not because it places any restriction on what he may believe or what he may do, but because he believes the use of the number may harm his daughter's spirit.
>
> Never to our knowledge has the Court interpreted the First Amendment to require the Government *itself* to behave in ways that the individual believes will further his or her spiritual development or that of his or her family. The Free Exercise Clause simply cannot be understood to require the Government to conduct its own internal affairs in ways that comport with the religious beliefs of particular citizens.

476 U.S. at 699.

The Court has held that governmental requirements tangentially impinging upon a unique religious opinion are not subject to the strict scrutiny test. The Court has stated that it will not employ any strict scrutiny test to religious freedom assertions based upon Social Security number use except in the unemployment compensation context. The Court stated:

> In recent years we have abstained from applying the *Sherbert* test (outside the unemployment compensation field) at all. In *Bowen v. Roy* [citation], we declined to apply *Sherbert* analysis to a federal statutory scheme that required benefit applicants and recipients to provide their Social Security numbers. The plaintiffs in that case asserted that it would violate their religious beliefs to obtain and provide a Social Security number for their daughter. We held the statute's application to the plaintiffs valid regardless of whether it was necessary to effectuate a compelling interest.

Employment Division etc. v. Smith, 494 U.S. 872, 883 (1990).

In the years since *Bowen* and *Smith* were decided, every court to consider the issue or a similar issue has held to the same effect. The Ninth Circuit has recently addressed the subject on three occasions. In *Dittman v. State of California*, 191 F.3d 1020 (9th Cir. 1999), the Ninth Circuit held that a state licensing board may require disclosure of Social Security numbers as a condition of renewal. In *Sutton v. Providence St. Joseph Medical Center*, 192 F.3d 826 (9th Cir. 1999), the Ninth

Circuit held that an employee's federal constitutional rights are not violated when a private employer requires a Social Security number as a hiring condition. In *Ferm v. United States Trustee*, 194 F.3d 954 (9th Cir. 1999), the Ninth Circuit held that a fine imposed against a non-attorney bankruptcy petition preparer for not disclosing his Social Security number did not violate the preparer's constitutional or privacy rights.

The State of California, Court of Appeal, has exhaustively treated the subject and come to the same conclusion. In *Brunson v. Department of Motor Vehicles*, 72 Cal.App.4th 1251 (2d Dist. 1999), the Court of Appeal held that the test to be applied in cases challenging neutral laws of general application on free exercise grounds is the rational basis test. The issue is whether the challenged requirement or governmental action, neutral and uniform in application, is a reasonable means of promoting a legitimate public interest. California Vehicle Code Sections 1653.5 and 12800, which mandate the provision of an applicant's Social Security number, meet the rational basis test. It is a religion-neutral law of general applicability. Although it may incidentally burden some religious practices, it does not offend the free exercise clause of either the United States Constitution or the California State Constitution, Article I, Section 4, so long as it is a rational means of achieving a legitimate governmental end.

Based upon *Bowen, Smith, Dittman, Sutton, Ferm*, and *Brunson*, there is no basis for believing that there is the remotest possibility of petitioner's position being accepted. The rule that an employer may require an employee to provide a Social Security number has been repeatedly upheld on the federal and state levels by all courts which have considered the issue. Not only is the number needed for identification so as to ferret out fraud, federal law requires that employers in the United States must use Social Security numbers for tax

information reporting purposes. See Internal Revenue Code, 26 U.S.C. §6109(d), which is entitled "Requirement of Use of Social Security Number."

II.

THE JURISDICTIONAL BASIS FOR THE POSITION IS LACKING.

It has been held that federal courts have no appellate jurisdiction over state court judgments in connection with modifying or vacating them. *Branson v. Nott*, 62 F.3d 287 (9th Cir. 1995). The Tenth Circuit has held that a plaintiff's suit on equal protection and due process grounds alleging discriminatory practices in awarding custody to mothers over fathers in child custody disputes was not something over which the federal courts would have subject matter jurisdiction. *Anderson v. State of Colorado*, 793 F.2d 262, 264 (10th Cir. 1986). To the same effect is *Keene Corp. v. Cass*, 908 F.2d 293 (8th Cir. 1990) [rejecting plaintiff's attempt to have the federal court rule that a state court order was unenforceable because it violated the due process and supremacy clauses]. The well-settled rule is that a plaintiff may not seek a reversal of a state court judgment simply by recasting his complaint in the form of a federal civil rights action. *Hagerty v. Succession of Clement*, 749 F.2d 217 (5th Cir. 1984).

In the present case, the issues raised have been thoroughly considered under the nuances of state law — the California Government Code and the California Information Practices Act (Civ. Code §1798.3(b)(4), defining local agencies) — and judgment has finally been entered against the plaintiff, the State Supreme Court having denied a petition for review. The issues have been thoroughly briefed and argued at all levels (see appendices to petitioner's petition).

III.

THE PETITIONER'S RELIANCE UPON INTERNATIONAL TREATIES IS UNAVAILING.

The petitioner relies upon international treaties protecting religious freedoms. But there is no reported case of a court in the United States ever recognizing a cause of action under *jus cogens* norms of international law for acts committed by government officials against a citizen of the United States. All cases finding a cognizable right under *jus cogens* involved either acts committed on a foreign citizen or acts committed by a foreign sovereign. See, for example, *White v. Paulson*, 997 F.Supp. 1380, 1381 (E.D. Wash. 1998); *Hawkins v. Comparet-Cassani*, 33 F.Supp.2d 1244, 1255 (C.D. Cal. 1999).

While federal courts may imply a private right of action for violation of *jus cogens*, federal courts do not automatically recognize a cause of action springing from those documents any time there is a federally protected right which does not have an express remedy. *Schweiker v. Chilicky*, 487 U.S. 412, 414 (1988). Instead, federal courts must consider whether there exist special factors counseling hesitation in the absence of affirmative action by Congress. Federal courts are hesitant to interfere in an area which is traditionally entrusted to the legislative and executive branches, and this Court has stated that a treaty is enforceable in this country only if it is self-executing or if the legislature passes legislation implementing the provisions of the treaty. *Foster v. Neilson*, 27 U.S. 253, 314 (1829). The Ninth Circuit has developed a four-part test to determine when a treaty is self-executing. *Islamic Republic of Iran v. Boeing*, 771 F.2d 1279, 1283 (9th Cir. 1985). The treaties relied upon by the petitioner are not self-executing, and there is no indication that Congress has enacted implementing legislation which would cause these international covenants to

supersede extant federal appellate authority. Because these treaties do not create any private right of action under which a plaintiff may bring suit or successfully state a federal claim, they must be rejected as a basis for relief and jurisdiction. International treaties have generally been rejected as a basis for a federal action. *Igartua de la Rosa v. United States*, 32 F.3d 8, 10 (5th Cir. 1994); *In re Extradition of Chung*, 968 F.Supp. 791, 803 (D.C. Conn. 1997).

CONCLUSION

For the foregoing reasons, it is respectfully requested that the Court deny the petition for writ of certiorari.

Respectfully submitted,

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(3)

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In The
Supreme Court of the United States

Patrick Dain,

Petitioner,

v.

COUNTY OF VENTURA,
and
RONALD KOMERS, AS AN INDIVIDUAL AND AS FORMER PERSONNEL DIRECTOR OF THE COUNTY OF VENTURA,
and
BARBARA JOURNET, AS AN INDIVIDUAL AND PERSONNEL DIRECTOR OF THE COUNTY OF VENTURA,
AND DOES 1-10, INCLUSIVE,

Respondents.

On Petition for Writ of Certiorari to the
California Court of Appeal, Second Appellate District

REPLY TO BRIEF IN OPPOSITION

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I. RELIGIOUS RIGHTS ARE PROTECTED BY BOTH THE STATE AND FEDERAL CONSTITUTIONS.

This case is sui generis in nature and the issues contained have not been heard by the Court. Our Forefathers had the insight to recognize that religious beliefs were and would continue to be important issues to the Citizens of our Republic. Religious rights were/are so significant to a free society that the Forefathers included them in the First Amendment. Likewise, the authors of the California State Constitutions recognized these rights as well and included them as part of the State Constitutions, see *Constitution of California, 1879, Article I, Section 4, Constitution of California, 1879, Article I, Section 8, and California Constitution of 1849, Article I, Section 4.*

The Respondents argue that every appellate decision to consider this issue has rejected first amendment challenges to required utilization and submission of a social security number. The Respondents obviously have not familiarized themselves with Petitioner's pleadings. Several courts have held that the government has improperly applied the use of Social Security Numbers in the conduct of its business. In *Leahy v.District of Columbia,* (D.C. Cir. 1987) 833 F.2d 1046, 1048-1049, a religious rights case, the court held that the requirement of providing an SSN was not the least restrictive means of serving a governmental interest.

The Respondents continually mention *Bowen v. Roy,* 476 U.S. 693, 699-701 (1986) as their best attempt to argue their position. In the instant case, Petitioner does not have a social security number because of his strong sincere religious belief that it is the mark of the beast as prophesied in the Book of Revelation of the Holy Bible. Petitioner refuses to

participate in the Federal Social Security benefit scheme. Respondents claim that they can apply a Social Security Number to Petitioner because *Bowen, supra,* states that to receive welfare benefits, the applicant must provide the number. That is not the case here as Petitioner refuses all benefits associated with such numbers. The instant case and *Bowen, supra,* are thus, distinguishable. The Constitutions protect the rights of Citizens by keeping tight reigns on the government. *Bowen, supra,* simply states that if one volunteers to participate in a government benefit program scheme (a privilege), one must follow the government's rules and guidelines of the voluntary program. *Bowen, supra,* does not state that the Social Security Benefit scheme is a mandatory program. Petitioner is demanding that the Respondents cease from their disregard and malice for the Constitution. Respondents' contention is that they are above God and the Constitution.

Since the filing of this cause of action, Respondents have "enrolled" Petitioner in Medicare, another Federal Benefits scheme. Respondents did this against Petitioner's strong objections and notice of refusal to participate in the program. Petitioner gave notice to Respondents that all Federal benefit programs are voluntary. Respondents advised Petitioner that the program was mandatory, the same as Social Security.

Religious rights were also sustained in the landmark case, *Callahan v. Woods,* (9th Cir. 1981) 658 F. 2d 679, 683 and *Stevens v. Berger,* (E.D.N.Y.) 1977) 428 F.Supp. 896, 901). These courts and others have discussed how the government can attain its goals without the use of the Social Security Number mark of the beast. Laws requiring the use of Social Security Numbers cannot be neutral if they violate basic religious tenants forbidden by the Holy Bible. In

I Chronicles, Chapter 21, King David numbered Israel in a similar fashion that our government is numbering in this country. King David and the nation of Israel suffered the wrath of God for this "numbering". Are we not to follow and take counsel from the Holy Scriptures that serve as the foundation for the laws of our Republic?

II. THE UNITED STATES SUPREME COURT HAS JURISDICTION.

28 U.S.C. § 1257 states in pertinent part:

> (a) Final judgement or decree rendered by the Highest Court in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a statute of any state is drawn in question on the grounds of it being repugnant to the Constitution, treaties, or laws of the United States.

Respondents contend that the present case is solely a matter of state law and the case has been thoroughly briefed and argued at all levels. Respondents have created new law by not following state and federal law. There is no law requiring anyone to have a Social Security Number to live or work in the United States. Federal and state issues and laws are inextricable in this case. The various treaty violations compound the problem for Respondents.

The issues at hand have not been argued at all levels. To the contrary, Petitioner was not afforded reasonable time to argue his case before the trial court because the trial judge did not want to hear the issues being raised. From that point, Respondents enjoyed an assembly line rubber stamping of the trial court's dismissal.

III. INTERNATIONAL TREATIES PROTECT RELIGIOUS RIGHTS.

Respondents do not argue that they have not committed the violations of International law. Rather, they argue that there is no reportable case to apply here. We agree and admit that this case is an excellent opportunity for the Court to render a decision in an area of concern which touches the lives of every man, woman and child in the United States.

CONCLUSION

This case presents very serious religious rights issues that effect most Americans on a daily basis. Petitioner respectfully requests this Court grant Certiorari to review the issues.

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